

REMARKS

The Applicants request reconsideration of the rejection.

Claims 22 and 24 are the only remaining claims.

As set forth in the Remarks accompanying the Reply filed August 28, 2008, claims 22 and 24 have been rewritten in independent form to include, respectively, the subject matter of independent claims 21 and 23. Further, the language of claims 21 and 23 added to claims 22 and 24 has been amended to recite that the acquired characteristic values are stored in memory, in accordance with the Examiner's kind suggestion. In view of these amendments, the outstanding rejection under 35 U.S.C. §103(a) is moot.

In addition, the Applicants request withdrawal of the finality of the Office Action dated May 20, 2008, and issuance of a new non-final Office Action to address the matters set forth in the Advisory Action mailed August 29, 2008. In particular, each of the matters raised in the Advisory Action concerns language that was present in the claims before the Final Rejection was mailed, was not addressed in the Final Rejection, and did not result from any amendment made in the after-final Reply filed August 20, 2008. The Applicants respectfully submit that, were the finality of the Office Action not withdrawn, the above amendments, which are believed to place the application in allowance, would not be entered without the filing of a Petition for Extension of Time. On the other hand, if the finality of the Office Action is withdrawn and a new Office Action mailed, which seems appropriate in light of the matters raised in the Advisory Action, then the Reply filed August 20, 2008 would be considered a proper response tolling the shortened statutory period for responding to the now non-final Office Action, such that the above amendments should be entered as supplemental to the response filed August 20.

Turning to the amendments, the Advisory Action suggests that the limitations “said levels” and “the level values” lack proper antecedent basis, and that the limitations in claim 24 of “third obtaining means” and “fourth obtaining means” have a scope that is unclear. The Examiner suggests that these means may correlate to the “third table” and “fourth table” described in the disclosure.

Turning first to the first matter raised in the Advisory Action, the Applicants note that the number of claims has been reduced to the two claims (22 and 24) indicated to have allowable subject matter, by rewriting each in independent form, in accordance with the Examiner’s comment on page 5 of the Final Rejection. Still, the Advisory Action was mailed which states that the amendments generate issues under 35 U.S.C. §112, as noted above, with respect to “said levels” and “the level values” in claim 22. However, these limitations were present in claim 22 before the Final Rejection was mailed, were not found indefinite in the Final Rejection, and did not result from any after-final amendment. Therefore, even if these claim expression are indefinite, it seems that a non-final Office Action would be warranted to give the Applicants a fair opportunity to amend the claims as necessary.

In order to expedite prosecution and allowance of the claims, however, the Applicants offer the above amendments to change “said levels” to --said classification levels-- in claim 22, and to change “upper and lower limit values for the level values” to --upper and lower limit threshold values--, and deleting “the level values” in claims 22 and 24, to remove any question of indefiniteness.

Concerning claim 24, the Advisory Action objects to “third obtaining means” and “fourth obtaining means”, finding these expressions unclear. In Reply, the Applicants note that these expressions were also present in claim 24 before the Final Rejection was mailed, and were not found indefinite in the Final Rejection. In addition, these expressions were not added by any after-final amendment.

Therefore, even if these claim expressions are indefinite, it seems that a non-final Office Action would be warranted to give the Applicants a fair opportunity to amend the claims as necessary.

However, to expedite prosecution and allowance of claim 24, and although the Applicants should not be required to make a quick designation of the correlation of the third and fourth obtaining means to structures set forth in the application for performing the related functions, it may suffice to say in this paper that the specification generally describes the server as performing most of the “obtaining” utilizing attributes, etc. stored in various tables, optionally in accordance with specific inputs provided by a user, but at least one would not say that either of the third and fourth obtaining means corresponds one-to-one with a table, as queried by the Examiner in the Advisory Action. In any event, the designations “third” and “fourth” are used in claim 24 because they come next numerically after the claimed “first” and “second” obtaining means (which are not deemed unclear), and thus should not be correlated with the “third” and “fourth” tables of the disclosure.

In view of the foregoing amendments and remarks, the Applicants respectfully submit that the issues raised in the Advisory Action are overcome sufficiently for the application to be allowed. Because the application presently has an “after-final” designation, the Applicants conditionally petition for a one-month extension of time to ensure the timely filing of the above amendments. However, the Applicants earnestly submit that the finality of the Office Action should be withdrawn to permit these amendments to be entered without the requirement of an extension and the related fee.

In view of the foregoing amendments and remarks, the Applicants request reconsideration of the rejection and allowance of the claims.

To the extent necessary, Applicants petition for an extension of time under 37 CFR 1.136. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, or credit any overpayment of fees, to the deposit account of Mattingly, Stanger & Malur, P.C., Deposit Account No. 50-1417 (referencing attorney docket no. 520.43063X00).

Respectfully submitted,

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